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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROCKY M. CONTRERAS,

12 Plaintiff,

13 vs.
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16 WALTER J. BRUDZINSKI, U.S.C.G.,
Administrative Law Judge

17 Defendant.
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CASE NO. 08CV1154 JLS (POR)

**ORDER (1) DISMISSING
COMPLAINT FOR LACK OF
VENUE WITHOUT PREJUDICE,
(2) DENYING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS AS MOOT; (3)
DENYING MOTION TO APPOINT
COUNSEL AS MOOT; AND (4)
DENYING MOTION TO AMEND
AS MOOT**

(Docs. Nos. 1, 2, 3, & 4)

19 Presently before the Court are Plaintiff's complaint (Doc. No. 1), motion to appoint counsel
20 (Doc. No. 2), motion for leave to proceed in forma pauperis (Doc. No. 3), and motion to amend both
21 motions (Doc. No. 4). Because Plaintiff moved to proceed in forma pauperis, Plaintiff has not served
22 the summons and complaint on the Defendant. Therefore, Defendant has not filed a responsive
23 pleading.


24 Where the defendant has not yet filed a responsive pleading and the time for doing so has not
25 run, venue may be raised by a court sua sponte. Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir.
26 1986). Because Plaintiff alleges federal constitutional violations, Plaintiff must bring this action "in:
27 (1) a judicial district where any defendant resides, if all defendants reside in the same State; (2) a
28 judicial district in which a substantial part of the events or omissions giving rise to the claim occurred

1 . . . or a judicial district in which any defendant may be found, if there is no district in which the action
2 may otherwise be brought.” 28 U.S.C. § 1391(b) (1996); Costlow, 790 F.2d at 1488; Decker Coal Co.
3 v. Commonwealth Edison Co., 805 F.2d 834, 842 (9th Cir. 1986). A determination of improper venue
4 does not go to the merits of the case, and, therefore, any dismissal on this ground must be without
5 prejudice. In re Hall, 939 F2d 802, 804 (9th Cir. 1991).

6 In the complaint, Plaintiff states that he is bringing an action against an Administrative Law
7 Judge from New York for denying him a “trial and/or hearing.” He alleges that the Defendant’s action
8 was an “attempt to get back” at him for filing a previous lawsuit against another Administrative Law
9 Judge. Plaintiff also lives in Visalia, California and it is not clear that any of the “events or omissions”
10 giving rise to the claims took place in this district. Therefore, since Plaintiff has not shown that any
11 defendant resides in this district or that a substantial part of the events or omissions giving rise to his
12 claims occurred in this district, the Court **DISMISSES** Plaintiff’s complaint without prejudice and
13 **DENIES** Plaintiff’s motion to appoint counsel, motion to proceed in forma pauperis, and motion to
14 amend as moot.

15 IT IS SO ORDERED.

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17 DATED: August 11, 2008

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19 Honorable Janis L. Sammartino
20 United States District Judge
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